

**MINUTES OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
REGULAR MEETING  
APRIL 25, 2005**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, April 25, 2005 in the City Council Chamber of the Melvin Municipal Office Building, Greensboro, North Carolina, commencing at 2:04 p.m. The following members were present: Sandra Anderson, Ann Buffington, John Cross Chair Hugh Holston, Jim Kee, Rick Pinto and Janet Wright. Bill Ruska, Zoning Administrator, Barry Levine, Zoning Enforcement Officer and Blair Carr, Esq., from the City Attorney's Office, were also present

Chair Holston called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method for appealing any ruling made by the Board. Chair Holston also advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

**APPROVAL OF MINUTES OF LAST MEETING**

Mr. Pinto moved to approve the minutes of the March, 28, 2004, as submitted, seconded by Mr. Kee. The Board voted 6-0-1 in favor of the motion. (Ayes: Cross, Holston, Kee, Pinto and Wright. Nays: None. Abstain: Anderson)

Chair Holston welcomed Sandra Anderson as the newest member of the Board.

Mr. Ruska was sworn in for evidence to be given by him on all the requests before the Board today.

**OLD BUSINESS**

**VARIANCE**

- A. BOA-05-05: 4007 DONEGAL DRIVE MICHAEL AND SANDRA HORLICK REQUEST VARIANCES FROM TWO MINIMUM SIDE SETBACK REQUIREMENTS. THIS CASE WAS CONTINUED FROM THE JANUARY 24, FEBRUARY 28, AND MARCH 28, 2005 MEETINGS. VIOLATION #1: AN EXISTING CARPORT, WHICH HAS BEEN ATTACHED ONTO THE EASTERN SIDE OF THE HOUSE, ENCROACHES 3.85 FEET INTO A 5-FOOT SIDE SETBACK. TABLE 30-4-61. VIOLATION #2: AN EXISTING STORAGE SHED, WHICH HAS BEEN CONSTRUCTED ONTO THE WESTERN SIDE OF THE HOUSE, ENCROACHES 3.3 FEET INTO A 5-FOOT SIDE SETBACK TABLE 30-4-6-1. PRESENT ZONING-RS-9, BS-153, CROSS STREET-REHOBETH CHURCH ROAD. (DENIED)**

Mr. Ruska stated that Michael and Sandra Horlick are the owners of a parcel located at 4007 Donegal Drive. This case was continued from the January 24, February 28, and March 28, 2005 meetings. The applicant has submitted a survey that accurately reflects the buildings encroachments. The lot is located on the eastern side of Donegal Drive, west of Rehobeth Church Road on zoning map block sheet 153 and is zoned RS-9. The lot contains a single-family dwelling. The applicants have added two additions to their house. The applicant is requesting variances for both additions. The carport addition, which is attached to the eastern side of the house encroaches 3.8 feet into a five-foot side setback and the storage shed addition attached on the western side encroaches 3.3 feet into a 5-foot side setback. The zoning office received a complaint that the owners were adding onto the house without building permits. Barry Levine, City of Greensboro Zoning Officer made an on-site inspection, and on December 9, 2004 issued the applicants a Notice of Violation. The Notice of Violation informed the owners that the two additions were in violation of side setback requirements. They were instructed to comply with the

minimum setback requirements. On December 30, 2004 the applicants applied for a variance for the two encroachments on this property. Based on the survey, the carport addition appears to be approximately 11.1 feet by 17.7 feet and contains 196 square feet. The storage shed addition is oddly shaped and appears to contain approximately 300 square feet. The adjacent properties are also zoned RS-9.

Chair Holston asked if there was anyone present wishing to speak on this matter.

Michael Horlick, 4007 Donegal Drive, the property owner, was sworn in and stated that he has been building on this property for the past 2 years. He was unaware of the setback requirements. He constructed the additional buildings for storage of an automobile in the carport and personal items in the shed structure. The driveway goes from the front of the land to the rear of the land. He presented photographs for the Board members' review.

Barry Levine, Zoning Enforcement Officer, was sworn in and submitted additional photographs for review.

Mr. Horlick stated that he bought the house next door about 2 years ago so his mother-in-law could move into it and they could take care of her. He has been using the shed structure to keep books, toys and collectibles. There is a swimming pool in the back yard and no room to place the structure there so he built it on the side. He presented a letter from the next door neighbor stating that they have no objection to the additional structures.

Virginia Rogers, 4006 Donegal Drive, was sworn in and stated that she and the other neighbors are not opposed to the carport but they are concerned about the placement of the shed structure because it hurts the property values of their home which is across the street. She presented a notarized petition from 16 neighbors that are also opposed to the shed structure.

Mr. Levine returned to the podium and stated that he had received phone calls from another lady in the neighborhood that was very opposed to the structures. The Building Inspector reported to him that the shed structure was slated for demolition.

During discussion it was determined that the applicant had not met the requirements necessary for the structures to remain in place.

Mr. Pinto moved that, in regard to BOA-05-05, 4007 Donegal Drive, based on the stated findings of fact, the Zoning Enforcement Officer be upheld and the variance denied, based on the following: incorporate the facts as presented by staff and the information given by the applicant. There has been no showing that no reasonable use of the property can be made if the variance is denied; there has been no showing of unique circumstances relating to this property as opposed to other similar properties; and the hardship results from the applicants' own actions in building both the carport and the storage area without determining that he could make those additions within the rules of the City of Greensboro, seconded by Ms. Buffington. The Board voted 7-0 in favor of the motion. (Ayes: Anderson, Buffington, Cross, Holston, Kee, Pinto and Wright. Nays: None.)

**B. BOA-05-13: 1202 WEST MEADOWVIEW ROAD WILEY SYKES, III REQUESTS VARIANCES FROM THE MINIMUM REAR SETBACK REQUIREMENT AND FROM A MINOR THOROUGHFARE SETBACK REQUIREMENT. THIS CASE WAS CONTINUED FROM THE MARCH 28, 2005 MEETING. VIOLATION #1: A PROPOSED SINGLE FAMILY DWELLING WILL ENCROACH 5 FEET INTO A REQUIRED 25-FOOT REAR SETBACK. TABLE 30-4-6-1. VIOLATION #2: THE DWELLING WILL ALSO ENCROACH 15 FEET INTO A 40-FOOT MINOR THOROUGHFARE SETBACK (WEST MEADOWVIEW ROAD). PRESENT ZONING-RS-9, BS-41, CROSS STREET - COLISEUM DRIVE. (GRANTED)**

Mr. Ruska stated that Wiley A. Sykes, III is the owner of the property located at 1202 West Meadowview Road. This case was continued from the March 28, 2005 meeting. The property is located on the north side of West Meadowview Road, east of Coliseum Boulevard on zoning map block sheet 41. The applicant is requesting two dimensional variances for a proposed single family dwelling. The proposed dwelling will encroach 5 feet into a required 25-foot rear setback and 15 feet into a 40-foot minor thoroughfare setback. West Meadowview Road is designated as minor thoroughfare and has a more restrictive setback than a collector street. This portion of West Meadowview Road has been widened and the property lost some frontage due to the road widening. The property is currently zoned RS-9. Tax records indicate the size of the lot is approximately 0.170 acre which converts to approximately 7,400 square feet. The lot is nonconforming in relation to lot area, because it does not contain a minimum of 9,000 square feet. The lot is triangular in shape. The adjacent properties located to the east are also zoned RS-9, the adjacent properties located to the north are zoned RM-18, and the properties located on the south side of West Meadowview Road are zoned RM-5 and RS-9.

Chair Holston asked if there was anyone present wishing to speak on this matter.

Wiley A. Sykes, III, 3506 Kirby Drive, was sworn in and stated that he and his father own this property and they would like to get enough buildable area to construct a house. The triangular shape restricts their ability to build anything. The shape of the lot was created by North Carolina Department of Transportation when they widened the road. The increased right-of-way and setbacks make it extremely difficult to use this as a buildable lot. There is also a significant slope on both sides of the property.

No one spoke in opposition to the request.

Mr. Cross moved that in regard to BOA-05-13, 1222 W. Meadowview Road, the Zoning Enforcement Officer be overruled and the variance granted, incorporating the facts as presented by staff and the applicant, based on the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance. If the applicant complies with the provisions of the ordinance he will not be able to make reasonable use of the property because as the applicant stated, the property is a unique shape and has a smaller lot size than the minimum 9,000 square feet. This was the result of the Greensboro Department of Transportation taking some of the property. Also there are some significant slopes on both sides of the property making it difficult to build but for the variance. In fact, the right-of-way changes the property line on his property as opposed to the neighboring property. The proposed building will be roughly in line with the neighboring building. The hardship of which the applicant complains results from unique circumstances related to the applicant's property for the same reasons. The hardship results from the application of this ordinance to the property because but for the ordinance, the variance would not be required and he would be able to build on the property and use it and it is not permitted now because of the setbacks. The hardship is not the result of the applicants' own actions as the applicant has not yet acted at all and it is the unique circumstances of the property that was created by the GDOT taking that has created that. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it would now allow this to be a buildable lot, the house size would be comparable to other houses in the neighborhood and not significantly different than frontage of neighboring houses. Granting of the variance assures public safety and welfare and does substantial justice because it is not going to be a problem in this particular neighborhood based on the testimony heard and it does allow this property to be used, seconded by Mr. Pinto. The Board voted 7-0 in favor of the motion. (Ayes: Anderson, Buffington, Cross, Holston, Kee, Pinto and Wright. Nays: None.)

## **NEW BUSINESS**

### **VARIANCE**

**A. BOA-05-16: 5813 LAKE BRANDT ROAD GUILFORD COUNTY SCHOOLS REQUESTS A VARIANCE FROM THE MAXIMUM SIGN HEIGHT REQUIREMENT. VIOLATION: A PROPOSED FREESTANDING IDENTIFICATION SIGN FOR JESSE WHARTON ELEMENTARY SCHOOL WILL EXCEED THE MAXIMUM HEIGHT OF 6 FEET BY 3.8 FEET. TABLE 30-5-5.2, PRESENT ZONING-RS-40, BS-295, CROSS STREET-NORTH BEECH LANE. (GRANTED)**

Mr. Cross stated he would recuse himself as his firm represents the Guilford County School system. Ms. Wright moved to recuse Mr. Cross, seconded by Mr. Kee. The Board voted 6-0-1 in favor of the motion. (Ayes: Anderson, Buffington, Holston, Kee, Pinto and Wright. Nays: None. Abstained: Cross.)

Mr. Ruska stated that Guilford County Board of Education is the owner of Jesse Wharton Elementary School located at 5813 Lake Brandt Road. The property is located on the western side of Lake Brandt Road north of North Beech Lane on zoning map block sheet 295. The lot is currently zoned RS-40. The applicant is proposing to locate a freestanding information board on the property. The sign will exceed the allowable height of 8 feet by 1.8 feet. The sign was advertised at a greater height request than what the Ordinance permits; thus the height variance request is lesser than the applicant's original request. The property contains approximately 26 acres and has approximately 500 feet of frontage on Lake Brandt Road. The sign is proposed to be placed near the main entrance to the school. The information board will contain approximately 45 square feet of signage and will not be internally light; however, the sign may have indirect lighting. There are two existing signs on the property that are approximately four feet tall. These signs serve as development entrance signs, which are permitted in all districts, and only contain the name of the school. The two existing entrance signs are in compliance with the minimum sign requirements. The adjacent properties to the west, north, and on the eastern side of Lake Brandt Road are also zoned RS-40 and the adjacent property located to the south is zoned CD-PDR.

Chair Holston asked if there was anyone present wishing to speak on this matter.

Wade Hampton, 701 W. Mountain Street, principal of Jessie Wharton Elementary School, was sworn in and presented additional photographs. He stated that it is felt that this new signage would make it easier for area residents, as well as students and parents to observe what activities and events are scheduled at the school. The PTA has done fund-raisers to obtain the funds to purchase the new sign and the labor and design were donated by parents that are active in the school. He feels this is unique because this is a school and a focal point of the community and is used by more than 1,000 students and staff each day. It is felt that the size of the lettering will make it easier to read and will be safer for those trying to read it.

No one spoke in opposition to the request.

Ms. Buffington moved that in regard to BOA-05-16, 5813 Lake Brandt Road, the Zoning Enforcement Officer be overruled and the variance granted, incorporating the facts as presented by staff and the applicant, based on the following findings of fact: the applicant has proven that because of where the property is located in a residential area, it is much more reasonable to have the sign of the scope that is requested; the hardship is somewhat unique, in that, the school is located in a residential area and has an extreme amount of use by both the students and local residents; the hardship results due to the ordinance related to the property as previously stated; the hardship is not the result of the applicant's own actions; the variance is in general purpose and intent of the ordinance; the proposed sign adds to the public safety and welfare of the community, seconded by Ms. Wright. The Board voted 6-0-1 in favor of the motion. (Ayes: Anderson, Buffington, Holston, Kee, Pinto and Wright. Nays: None. Abstained: Cross)

**B. BOA-05-17: 132 EAST FISHER AVENUE CHANEY-FRYE PROPERTIES #2, LLC REQUESTS A VARIANCE FOR AN EXISTING MULTIFAMILY BUILDING THAT ENCROACHES INTO AN INTERIOR SETBACK REQUIREMENT. VIOLATION: BY SLIGHTLY CHANGING A PROPERTY LINE, AN EXISTING BUILDING THAT PRESENTLY ENCROACHES OVER THE PROPERTY LINE WILL NOW ENCROACH 20 FEET INTO A 20-FOOT INTERIOR SETBACK. TABLE 30-4-6-4, PRESENT ZONING-GO-M, BS-2, CROSS STREET-CHURCH STREET. (GRANTED)**

Mr. Ruska stated that Chaney-Frye Properties is the owner of the property located at 132 East Fisher Avenue. The property is located at the southwestern intersection of East Fisher Avenue and East Smith Street ramp on zoning map block sheet 2. The lot is currently zoned GO-M. The applicant is requesting a variance from a minimum interior setback. An existing multifamily building encroached 1.74 feet over the western property line. The applicant has acquired additional property and changed the property line so the building does not encroach onto the adjacent property. The multifamily building is basically located on the lot line. The required setback is 20 feet and the applicant is proposing a 20-foot encroachment. The requested encroachment improves the situation, even though the minimum setbacks are still not in compliance. The front and rear portion of the building are approximately 1-foot from the new property line and the center portion of the building barely touches the new property line. The adjacent building will remain in compliance with its required setback. The applicant stated that the building has been remodeled and is a landmark designation that is recognized by the Guilford County Historic Preservationists. The present owner did not create the building encroachment over the property line. It is assumed that a surveying error occurred in the past, or the building was incorrectly placed on the property which created the problem. The adjacent property to the east is zoned LO, the adjacent property located to the south is zoned GB, and the property located on the opposite intersection is zoned GO-M.

Chair Holston asked if there was anyone present wishing to speak on this matter.

Marc Isaacson, 101 W. Friendly Avenue, attorney representing the property owner, was sworn in and presented materials for the Board members' review. He stated that the applicants purchased this property in order to restore it and turn it into condominium units. The GDOT realigned E. Fisher Avenue and changed the grade of many of the properties in that area. The property was originally used as apartments for Vick Chemical Company many years ago. They are seeking a variance because there have been changes to the lot lines in the immediate area. It is felt that granting the variance will keep the property in harmony with the area that it is in and it is of historical significance and granting the variance will do substantial justice.

David Brossoit, 201 W. Bessemer Avenue, was sworn in and stated that he owns the property just adjacent and west of the subject property. He fully supports this request and feels that the applicants have done an outstanding job of transforming this building to a jewel in the neighborhood.

No one spoke in opposition to the request.

Mr. Kee moved in regard to BOA-05-17, 132 E. Fisher Avenue that this variance request be granted, incorporating the facts as presented by staff and the applicant, and based on the following findings of fact: there are practical difficulties and unnecessary hardships that result from carrying out the strict letter of the ordinance; if the applicant complies with the provisions of the ordinance they can make no reasonable use of this property; because they cannot use the property for which it was originally intended, which was multifamily; the hardship of which the applicant complains results from the unique circumstances related to the applicant's property because there have been surveying errors in the past and the GDOT has realigned the property lines resulting in an ordinance change; the hardship results from the application of the ordinance because this property has been realigned; the hardship is not the result of the applicant's own actions because the property has been in existence for many years and the applicants made no error in trying to utilize this property; the variance is in harmony with the general

purpose and intent of this ordinance and preserves its spirit because the property will continue to be used as a multifamily dwelling and continue as a historic structure; the granting of the variance assures the public safety and welfare and does substantial justice because this project has already been approved by Building Inspector and also the Historic Preservation Commission, seconded by Ms. Buffington. The Board voted 7-0 in favor of the motion. (Ayes: Anderson, Buffington, Cross, Holston, Kee, Pinto and Wright. Nays: None.)

**C. BOA-05-18: 823 ROBBERSON COMER ROAD LEON NAPPER REQUESTS VARIANCES FROM THE MINIMUM LOT WIDTH REQUIREMENT. VIOLATION: AN EXISTING LOT IS PROPOSED TO BE SUB-DIVIDED TO CREATE TWO LOTS, WHICH WILL EACH HAVE LOT WIDTHS OF 73.5 FEET WHEN 75 FEET IS REQUIRED; THEREFORE, A REDUCTION OF 1.5 FEET FOR EACH LOT IS REQUESTED. THIS CASE WAS PREVIOUSLY HEARD AND APPROVED AT THE SEPTEMBER 23, 2002 MEETING. TABLE 30-4-6-1, PRESENT ZONING - RS-12, BS-175, CROSS STREET - LAKE JEANETTE ROAD. (GRANTED)**

Mr. Ruska stated that Leon Napper is the owner of the property located at 823 Roberson Comer Road. This case was previously heard and approved at the September 23, 2002 meeting. More than 12 months has passed and no construction has begun; thus the variance has expired. The lot is located on the western side of Roberson Comer Road east of Lake Jeanette Road on zoning map block sheet 175. The property is currently zoned RS-12. The lot dimensions are approximately 140.99 feet at the front, 296.36 east side, 297.32 west side, and 196.40 at the rear. The lot contains approximately 49,356 square feet. The applicant is proposing to subdivide the lot. The variance request is for each of the two lots to have 73.5 feet at the 30-foot setback line instead of 75 feet as required, for a variance of 1.5 feet for each lot. The depth of the lot is twice the width of the lot. Each lot will contain a little more than 24,000 square feet. The lots gain in width as the depth increases. Seventy-five feet of lot width is achieved for each lot at a 45-foot setback. The 45-foot setback is where the applicant has shown the building envelope for the placement of the front wall of the house. The Planning Department has reviewed the drawing and determined that the property can be subdivided in compliance with the Ordinance into two buildable zone lots, one a conventional lot and one a flag lot. The other possible remedy would be to request a rezoning from RS-12 to RS-9. The RS-9 zoning district only requires 60 feet of lot width at the setback line. The adjacent subdivision, known as Prestbury, located to the west of the property is zoned RS-12 (CL). The subdivision contains 63 lots. This property contained more than 10 acres and, therefore, qualified for a cluster development, which allows each lot to meet RS-7 requirements in relation to lot width, lot area, and other dimensional requirements. The RS-7 zoning district allows for interior lots to have 50 feet of lot width at the setback line. The adjacent properties located to the north, south, and on the eastern side of Roberson Comer Road are also zoned RS-12.

Chair Holston asked if there was anyone present wishing to speak on this matter.

Thomas Scaramastra, 6075 N. Church Street, representing the property owner was sworn in and stated that he is a professional land surveyor. He presented maps for review. He stated that there is a slight change to what was originally requested, "A reduction of 1.5 feet is requested" and he pointed out that the reduction would actually be 1.5 feet instead of 1.4 feet.

Major Sanders, 200 Bragg Street, architect for the proposed project, was sworn in and stated that this request had previously been approved and the owner lives out of town and failed to follow up on this project until the one-year time limit ran out. With the proposed new locations of the building on the site, he feels that the owner would be more than willing to adjust the locations of the proposed building to accommodate the variance restrictions. He is interested in moving forward with the construction. He feels that since the variance was granted previously that it should be granted at this time.

After some discussion Mr. Ruska pointed out that the applicant wishes to proceed with the request with a variance of 1.5 feet for each lot.

No one spoke in opposition to the request.

Mr. Pinto moved that in regard to BOA-05-18, 823 Roberson Comer Road, this variance request be granted, incorporating the facts as presented by staff and the applicant based on the following: there are practical difficulties or unnecessary hardships that result from the carrying out of the strict letter of this ordinance, in that, if the applicant complies with the provisions of this ordinance he cannot build on the property because there will not be enough space to divide this lot into two buildable lots and although it is possible to ask that the property be rezoned to RS-9 and therefore, have three lots instead of two and it is also possible to divide this into a front and back lot, one being a flag lot where there would be a driveway or an area of land for access along the side, both of those options are not as preferable to dividing it into two adjacent lots, and therefore, he would indicate that no reasonable use can be made of the property; the hardship of which the applicant complains results from the unique circumstances related to the property, in that, the property is wide enough on one end and it is only that the property tapers in the back that causes the problem and the applicant is asking for a 1.5 foot variance on each side which is not a significant variance in light of the overall size of the property; the hardship results from the application of this ordinance to the property for the reasons previously mentioned; this hardship is not of the applicant's own actions; the applicant could do either of the other options indicated previously but is choosing to try to make the best use of this property; the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because this is in harmony with the other lots around the area and is a better use and allows it to be more in harmony with the other lots than if you took either of the other two options; the granting of the variance assures public safety and welfare as there are no safety issues in this matter, seconded by Ms. Anderson. The Board voted 5-2 in favor of the motion. (Ayes: Anderson, Buffington, Kee, Pinto and Wright. Nays: Cross and Holston.)

Counsel Carr presented information concerning case law relevant to motions made by the Board of Adjustment and the impact of findings of fact in these cases. She cited several specific cases and explained their outcome to the Board members.

Mr. Ruska stated that there will be a training session for the members of the Board some time in the future. He will notify everyone as soon as something can be organized. After some discussion it seemed that a Thursday luncheon-type setting would work best for most of the members.

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There being no further business before the Board the meeting was adjourned at 4:22 p.m.

Respectfully submitted,

Hugh Holston, Chair  
Greensboro Board of Adjustment

HH/jd